

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

Jeffrey J. HENSON and
Jenny HENSON,

Plaintiffs,

v.

CIVIL ACTION
NO. 04-10514-NG

Alan LeBovidge as COMMISSIONER OF
REVENUE for the COMMONWEALTH OF
MASSACHUSETTS, CHIEF ADMINISTRATIVE
JUSTICE of the MASSACHUSETTS TRIAL
COURT, Sheryl PATE, and the UNITED
STATES of AMERICA,

Defendants.

**DEFENDANTS ALAN LEBOVIDGE, AS COMMISSIONER OF REVENUE
FOR THE COMMONWEALTH OF MASSACHUSETTS, AND CHIEF ADMINISTRATIVE
JUSTICE OF THE MASSACHUSETTS TRIAL COURTS'
MOTION TO DISMISS**

Alan LeBovidge, as the Commissioner of Revenue, and the Chief Administrative Justice of the Trial Court ("State Defendants"), hereby file their Motion to Dismiss Jeffrey J. Henson and Jenny Henson's ("Henson" or "Hensons") Verified Complaint ("Complaint"). As grounds for this motion, the State Defendants state that the complaint should be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The complaint against the State Defendants should also be dismissed for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) because the Hensons have failed to state a basis for federal court jurisdiction. Finally, the Complaint should be

dismissed for lack of jurisdiction because: 1) this Court lacks subject matter jurisdiction to sit in direct review of a state court judgment; 2) the Eleventh Amendment bars the Hensons' claim; 3) the Hensons' attempt to represent "those similarly situated" is inoperative; 4) the state court is immune from suits of this nature; 5) this Court should abstain under the *Younger* abstention doctrine, 6) the Court should abstain from this domestic relations case in the Probate Court under the general principles of comity and federalism, and 7) the Judicial Defendants did not violate Hensons' right of access to courts or right to due process. Accordingly, the Hensons have stated no facts or theory sufficient to support their claim for review in this Court and this action should be dismissed.

In further support of this motion to dismiss, the State Defendants submit a supporting Memorandum, filed herewith.

REQUEST FOR ORAL ARGUMENT

The State Defendants believe that oral argument may assist the Court in the decision of this motion, and therefore, request oral argument.

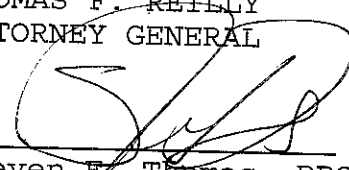
WHEREFORE, the State Defendants respectfully request that the Complaint be dismissed.

Respectfully submitted,

ALAN LEBOVIDGE, AS COMMISSIONER OF
REVENUE FOR THE COMMONWEALTH OF
MASSACHUSETTS, AND CHIEF ADMINISTRATIVE
JUSTICE OF THE MASSACHUSETTS TRIAL
COURTS,

By their attorney

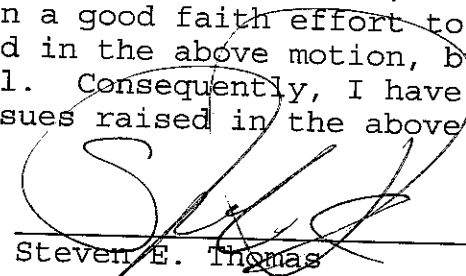
THOMAS F. REILLY
ATTORNEY GENERAL


Steven E. Thomas, BBO# 496465
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Boston, MA 02108-1698
(617) 727-2200, ext. 2085

Dated: July 1, 2004

Certification Pursuant to Local Rule 7.1(a)(2)

I, Steven E. Thomas, Assistant Attorney General, hereby certify that I have conferred with the plaintiffs' counsel in the past relative to this case. On July 1, 2004, I again attempted to confer with counsel in a good faith effort to narrow or resolve the issues raised in the above motion, but was unable to reach plaintiffs' counsel. Consequently, I have been unable to resolve or narrow the issues raised in the above motion.


Steven E. Thomas

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand)

on 7/1/04.

